

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

OLD DOMINION ELECTRIC COOPERATIVE,

Plaintiff.

v.

RAGNAR BENSON, INC.,

Defendant.

Civil Action Number 3:05CV034-JRS

**ORDER**

THIS MATTER comes before the Court on three discovery-related Motions: 1) MPR Associates, Inc. (“MPR”) and William Dykema’s (“Dykema”) Motion to Quash or Modify the Subpoena; 2) Defendant Ragnar Benson, Inc.’s (“RBI”) Motion for Sanctions Due to Spoliation; and 3) RBI’s Motion to Compel.

Upon due consideration, MPR and Dykema’s Motion to Quash or Modify the Subpoena is hereby GRANTED. The subpoena is quashed in so far as it seeks access to Dykema’s hard drive, documents unrelated to the construction project at issue, or privileged documents. No factual support has been presented for the contention that there are relevant deleted e-mails that may exist on Dykema’s hard drive. Dykema has been deposed, and counsel for RBI had an opportunity to inquire about relevant e-mails on his hard drive. During the deposition, not a single question was propounded to establish the fact of deleted e-mails relevant to the issues before the Court. The Court accepts the assertion that all documents, including everything on the hard drive related to the project in question, has been turned over to RBI. As such, RBI will not be permitted to go on a fishing

expedition for deleted e-mails that may or may not exist. The Court will not require a party to comply with a purely speculative discovery request that is not “reasonably calculated” to lead to admissible evidence. See Fed. R. Civ. P. 26(b)(1).

Upon due consideration, RBI’s Motion for Sanctions Due to Spoliation is hereby DENIED. RBI has failed to demonstrate that Old Dominion Electric Cooperative’s (“ODEC”) document retention policy resulted in spoliation of relevant evidence. Furthermore, there is no demonstrable prejudice to RBI.

Upon due consideration, RBI’s Motion to Compel is hereby DENIED as to Mr. Guy’s time sheets and as to drafts of memoranda prepared by Guy and by Dykama. Such documents are clearly privileged and undiscoverable. The documents contained in ODEC’s Privilege Logs whose privileged status is questioned by RBI, however, should be presented to the Court for *in camera* review as soon as possible. The Court would strongly prefer that the documents in question be submitted by this Friday, September 16, 2005.

Let the Clerk fax a copy of this Order to lead counsel for both parties, in addition to sending a copy of this Order to all counsel of record.

It is SO ORDERED.

ENTERED this 14 day of SEPTEMBER, 2005

/s/ James R. Spencer  
JAMES R. SPENCER  
UNITED STATES DISTRICT JUDGE